IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 10TH NOVEMBER 2006 / 19TH KARTHIKA 1928

WP(C).No. 27680 of 2005(T)

PETITIONER:

DIVAKARAN B.,
INTERNAL AUDITOR,NEKRAJE SERVICE CO-OPERATIVE BANK
NEKRAJE, KASARAGOD DISTRICT.

BY ADV. SRI.M.SASINDRAN

RESPONDENTS:
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1. NEKRAJE SERVICE CO-OPERATIVE BANK,
REPRESENTED BY PRESIDENT, NEKRAJE POST-671544,
KASARAGOD DISTRICT.

2. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL), KASARAGOD.

3. THE CO-OPERATIVE SERVICE EXAMINATION
BOARD, THIRUVANANTHAPURAM.

BY ADV. SRI.T.R.RAMACHANDRAN NAIR
GOVERNMENT PLEADER SRI.JAMES MATHEW KADAVAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC 27680/2005

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1: TRUE COPY OF the REPRESENTATION DATED 16.12.2002 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXHIBIT P2: TRUE COPY OF THE REPRESENTATION DATED 03.06.2004

EXHIBIT P3: TRUE COPY OF THE REPRESENTATION DATED 29.06.05 SUBMITTED BY THE PETITIONER BEFORE THE PRESIDENT OF THE SOCIETY.

EXHIBIT P4: TRUE COPY OF THE RESOLUTION NO.113/05-06 DATED 15.07.2005 TO THE BOARD OF DIRECTORS OF THE 1ST RESPONDENT SOCIETY.

EXHIBITS OF 1ST RESPONDENTS

EXHIBIT R1(a): TRUE COPY OF THE FEEDER CATEGORY RULES.

EXHIBIT R1(b): TRUE COPY OF THE ORDER NO.CRP.2861/2000 DATED 18.8.2000.

EXHIBIT R1(c): TRUE COPY OF THE ORDER NO.CRP-2090/2000 DATED 18.07.2000.

EXHIBIT R1(d): TRUE COPY OF THE LETTER NO.ST.6044/03 DATED 23.12.2003.

EXHIBIT R1(e): TRUE COPY OF THE ORDER NO.CRP-5638/04/(1) DATED 08.06.2005

//TRUE COPY//

P.A. TO JUDGE

PIUS C. KURIAKOSE, J.

W.P.(C) No. 27680 OF 2005

Dated this the 10th day of November, 2006

J U D G M E N T

The petitioner who is presently working as Internal Auditor in the 1st respondent Co-operative Bank is aggrieved by Ext.P4 resolution of the Board of Directors of the 1st respondent Bank by which it is resolved to fill up the vacancy in the post of Secretary to the Bank by direct recruitment and to request the Kerala Co-operative Service Examination Board-the 3rd respondent to fill up the vacancy by calling for applications and conducting written tests. According to the petitioner the post of Secretary became vacant on 1.7.2000 and being the seniormost in the lower post he has been working as Secretary in charge ever since 1.7.2000. According to him, he was qualified to be promoted as Secretary on 1.7.2000. The management did not promote him. Exts.P1, P2 and P3 were representations preferred by him praying that he be promoted to the post of Secretary. He refers to Rule 185 of the Kerala Co-operative Societies Rules and contends that the post is liable to be filled up by promotion. He is surprised by Ext.P4 resolution by which it is decided to fill up the post by direct recruitment. The endeavour to fill up the post by direct

recruitment is illegal. The following are the reliefs that are sought for by the petitioner in this writ petition.

i. issue a writ of mandamus or any other writ, order or direction directing the 1st respondent to promote the petitioner to the post of Secretary with effect from 1.7.2000 forthwith and to grant all consequential benefits including arrears of salary.

ii. to declare that the petitioner is entitled to be promoted as Secretary with effect from 1.7.2000.

iii. to call for the records leading to Ext.P4 and quash the same by issuing appropriate writ or order.

iv. to declare that Co-operative Examination Board can conduct written test only in respect of the post earmarked for direct recruitment.

v. issue any other writ order or direction as this Hon'ble Court may deem fit in the facts and circumstances of the case.

2. The 1st respondent has filed a detailed counter affidavit. It is contended therein that the writ petition is not maintainable. It is pointed out that all the reliefs which the petitioner has sought are against the 1st respondent which is a registered Co-operative Society and not against the Government or any other public authority. As per proceedings dt.20.12.88 the Joint Registrar

approved the Feeder Category Rules of the Bank. Staff pattern then existing was approved as per order dt.22.9.88. Ext.R1(a) is copy of the feeder category rules approved. It is pointed out that the feeder category for promotion to the post of Secretary is Assistant Secretary/Chief Accountant. It is then contended that when the Government revised the classification norms for the Bank, the Bank had not achieved the norms which are required in Class II and accordingly the Committee resolved on 3.3.2000 to re-classify the Bank to Class III. The Joint Registrar sanctioned the staff pattern for Class III to the Bank and Ext.R1(b) is copy of the proceedings dt.18.8.2000 issued by the Joint Registrar in this regard. It is pointed out that the post of Internal Auditor was sanctioned after cancelling the post of Accountant. It is further pointed out that in terms of the new staff pattern, revised feeder category rules were not adopted at that time and that the petitioner was given posting as Accountant only pursuant to the decision in an Adalat conducted by the Joint Registrar. The Counter Affidavit produces Ext.R1(c) which is copy of the order of the Joint Registrar dt.18.7.2000 by which the petitioner's claim for promotion as Secretary is rejected on the reason that the

petitioner had not been posted as Assistant Secretary. In view of Ext.R1(c) the petitioner's representations seeking promotion could not have been entertained at all. The counter affidavit has also produced copy of communication dt.23.12.03 forwarding the defects in the inspection conducted by the Joint Registrar. It was noticed in Ext.R1(d) that the feeder category rules for Class III has to be framed and approval should be obtained and any promotion made otherwise will be illegal. It is further contended that since the post of Assistant Secretary/Internal Auditor had to be included in the feeder category rules as per resolution dt.11.10.2003 approval of staff pattern for Class III as well as feeder category rules have been sought and pending consideration. Ext.R1(e) produced along with counter affidavit is copy of the order dt.8.6.05 of the Joint Registrar by which the Joint Registrar has approved new staff pattern and new feeder category rules. It is pointed out that as per Ext.R1(e) the post of Internal Auditor is only the feeder category post for promotion as Assistant Secretary. It is pointed out that in Ext.R1(e) it is specified that when a vacancy in higher post cannot be filled up by promotion it can be filled up only by direct recruitment. This was why it was

resolved that direct recruitment should be resorted to for filling up the post of Secretary. Ext.R1(c) has attained finality and petitioner has not so far challenge the same.

3. To the counter affidavit the petitioner has filed a reply affidavit reiterating his grounds.

4. Mr.M.Sasindran, learned counsel for the petitioner and Sri.T.R.Ramachandran Nair, learned counsel for the 1st respondent-bank addressed me at length on the basis of the pleadings raised by their respective parties and the documents placed on record. Sri.Ramachandran Nair submitted that the Writ Petition is not maintainable in as much as the 1st respondent against whom relief is sought for is a co-operative society and also on account of the commencement of Clause (d) of Section 69 (2) which came into effect with effect from 2.1.2003 by which service disputes have been brought under the jurisdiction of the Co-operative Arbitration Court. Sri.Sasindran, per contra, would resist all the submissions of Sri.T.R.Ramachandran Nair.

5. The 1st respondent-bank subsequently filed I.A.No.6382 of 2006 for reception of additional item of evidence, Ext.R1(f), the Feeder Category Rules which were in force in the bank prior to

Rules approved in 2005 (Ext.R1(a) Rules). Mr.Ramachandran Nair would place strong reliance on the judgment of the Full Bench in **Bhaskaran v. Additional Secretary** (1987(2) KLT 903) to support his contention that a writ will not lie against co-operative societies.. He also placed reliance on the judgment of this Court in **Chandran v. State of Kerala** (1994 (1) KLT Sh.Notes Case No.26, page 27) to argue that there is no rule or law compelling the Board of Directors to make appointment or promotion even in respect of any post that had been prescribed in the feeder category rules.

6. I have considered the rival submissions made before me and I am of the view that the petitioner is not entitled for relief. The Co-operative Arbitration Court has now been constituted under Section 70(A) for dealing with all types of non monitory disputes. Under Section 69(1)(c), a dispute between the society and its employee comes within the purview of the Arbitration Court. Sub Section (d) of Section 69(2) came into force w.e.f. 02.01.2003. On the terms of that Sub Section, dispute will include any dispute arising in connection with employment of officers and servants of different class of societies specified in

Sub Section (1) of Section 80 including their promotion and interse seniority.

7. The claim which has been raised by the writ petitioner in this writ petition is one for promotion to the post of Secretary. As claim is one which can be raised by him as a dispute before the Co-operative Arbitration Court, the argument of Mr.T.R.Ramachandran Nair that since the petitioner is having an effective and adequate statutory remedy the writ petition is not maintainable cannot be said to be without force. So also the learned counsel's argument based on the judgment of Full Bench in **Bhaskaran v. Additional Secretary (1987 (2) KLT 903)** and the judgment of this court in **Chandran v. State of Kerala (1994 (1) KLT Sh.Notes Case No.26, Page 27)** that no writ can be issued commanding the Director Board of the respondent Society to promote the petitioner to the post of Secretary, in this case where the petitioner has not established his entitlement to promotion before any statutory authority has some attraction.

8. On merits also, I am of the view that the petitioner's case is not that strong as Mr.Saseendran, the learned counsel would try to make out before me. Exhibit R1(c) is an order dated

18.07.2000 by the Joint Registrar, Kasargod whereby the petitioner's claim for promotion to the post of Secretary was rejected finding that the petitioner is not eligible for promotion. Even though Exhibit R1(c) order was addressed to the petitioner and he did receive that order, the petitioner has not significantly chosen to produce that order before this court. If he was aggrieved by Exhibit R1(c) he could have preferred an appeal against the same before the Government under Section 83(1) (j) of the statute. The order attained finality and his claim for retrospective promotion w.e.f. 01/07/2000 cannot be sustained in these proceedings under Article 226 especially since the petitioner has not established the claim before any of the statutory authorities. Exhibit R1(f) is the approved feeder category rules in currency in the 1st respondent during the period from 01.07.1987 and upto 18.08.2000. The feeder category for promotion to the post of Secretary as per Exhibit R1(f) is the post of Assistant Secretary/Chief Accountant. The petitioner was never promoted as Assistant Secretary or as Chief Accountant so that he can get a claim for promotion to the post of Secretary so long as Exhibit R1(f) was in currency. The argument which was seriously

urged before me by Mr.Saseendran was that in view of Exhibit R1 (b) the order dated 18.08.2000 passed by the Joint Registrar fixing new staff pattern, he is entitled to be promoted as Secretary. Exhibit R1(b) is the order fixing the staff pattern when the bank was reclassified as Class III Bank. By Exhibit R1(b) the post of Assistant Secretary was disallowed and a post of Internal Auditor has been sanctioned. It was by virtue of this order that the petitioner was promoted as Internal Auditor on 01.09.2000.

9. The argument of Mr.Ramachandran Nair is that under Rule 185(1), it was obligatory for the society to frame fresh feeder category rules and the issue of framing fresh feeder category rules was pending. Exhibit R1(b) is an inspection report communicated by the Joint Registrar to the 1st respondent Bank suggesting rectification of various defects noticed by the Joint Registrar on an inspection of the 1st respondent Bank.

10. Under Clause 13 of Exhibit R1(d), it is stated that feeder category rules for Class III have to be adopted and approval should be obtained from the Joint Registrar and further that promotions given without approval for feeder category rules will be illegal. The petitioner was Secretary in charge of the Bank

at the time when Exhibit R1(d) was received by the Bank. He should have been aware of Exhibit R1(d) and significantly he does not disclose anything about Exhibit R1(d) in the writ petition. The Board of Directors in office at that time on 11.10.2003 adopted resolution seeking fresh staff pattern including the post of Assistant Secretary and sought approval for revised feeder category rules. As per Exhibit R1(e) dated 08.06.2005, the Joint Registrar has sanctioned various posts including the post of Assistant Secretary just below the post of Secretary. Mr.Ramachandran's argument that in view of Exhibit R1(a), the petitioner's claim for promotion directly as Secretary from the post of Internal Auditor has force. As per Exhibit R1(a), the new feeder category rules approved by the Joint Registrar on 08.06.2005 (vide Annexure II, the feeder category to the post of Secretary is that of Assistant Secretary and feeder category for promotion as Assistant Secretary is the post of Internal Auditor).

11. Mr.Ramachandran Nair would justify Exhibit P4 resolution on the basis of Clause 7(VI) of Exhibit R1(a) also and point out that in as much as Exhibit R1(a) feeder category rules have not been challenged by the writ petitioner, the challenge

against Exhibit P4 adopted by the Board of Directors on the basis of the provisions in Exhibit R1(a) has to fail. The above argument is also in my opinion fairly strong.

12. Mr.Saseendran's argument was that a supernumerary post should be created in the light of the second proviso to Rule 185(1) for promoting the writ petitioner cannot be accepted since obviously all the employees in the feeder category to the post of Secretary have not relinquished their claims for promotion. The petitioner's request that he should be promoted simultaneously as Assistant Secretary and Secretary also in my opinion cannot be granted in view of Rule 184(1) which obliges the incumbent to work in the feeder category and complete the probation. Newly added Rule 184(4) may enable promotion of an employee during probation period, but then the same is a matter within the discretion of the management.

13. Even though the foregoing discussions will indicate that on merits also the writ petitioner does not have a strong case, I am inclined to dispose of the writ petition directing the petitioner to place his grievances before the Co-operative Arbitration Court. If the petitioner approaches the Co-operative

Arbitration Court within a month of receiving copy of this judgment, that court will entertain the petitioner's case as one instituted on time and dispose of the same uninfluenced by the observations made in this judgment regarding the merits of the petitioner's claim. As regards the post of Secretary in the Bank, the status quo as on today will be maintained for a period of three months.

The writ petition is disposed of as above but, in the circumstances without any order as to costs.

PIUS C. KURIAKOSE, JUDGE

Rp